Supreme Court, U. S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78 - 1407

JAMES H. BOONE,
Defendant-Petitioner

versus

STATE OF LOUISIANA
Plaintiff

RESPONSE IN OPPOSITION TO A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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IN THE
SUPREME COURT OF THE UNITED STATES

NO. 78 - 1407

JAMES H. BOONE
Defendant-Petitioner

v.

STATE OF LOUISIANA
Plaintiff

REPLY BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

The State of Louisiana, plaintiff herein, prays that this court deny the issuance of a Writ of Certiorari, to review the judgment and decision of the Supreme Court of the State of Louisiana affirming the conviction of James H. Boone for two counts of the offense of arson with intent to defraud in the Fourth Judicial District Court, Ouachita Parish, Louisiana.

JURISDICTION

Plaintiff-respondent states that Parts 2 and 3 of the proposed questions presented by petitioner do not invoke the jurisdiction of this Court for reasons hereinbelow described.

REASONS FOR DENIAL OF THE WRIT

Part 1: LACK OF NOTICE OF NATURE AND CAUSE OF ACCUSATION

Petitioner alleges that he was not advised of the nature and cause of the accusations against him in accordance with the requirements of the Sixth Amendment, United States Constitution.

In this matter, the defendant Boone was charged with two counts of arson of dwelling houses with the intent to defraud insurance companies in contravension of the provisions of the Louisiana Revised Statutes 14:53.

Article 53 of the Criminal Code of Louisiana defines the crime charged as follows:

> "Arson with the Intent to DeFraud is the setting fire to, or damaging by any explosive substance, any property, with intent to defraud."

Defendant-petitioner asserts that inasmuch as the crimes charged may be committed by either of two methods that he should have been advised of the method the State intended to prove its case in response to defendant-petitioner's Motion for Bill of Particulars.

The State, in response to said Motion for Bill of Particulars, chose not to bind itself to a conclusion concerning a scientific analysis of physical evidence. Rather, the State offered to the defendant the opportunity to examine all of its physical evidence in order that the defendant might draw

his own conclusion as to how the fire was set. Defendant-petitioner did not prevail himself of the opportunity to analyze and inspect the physical evidence in possession of the State. Had he done so, defendant-petitioner would have been in an equal position to understand the nature and cause of the Origin of these fires.

It is obvious that the State, in response to defendant's motion for bill of particulars, did all that could be constitutionally required of it by offering to defendant the opportunity to examine its physical evidence. Such an offer constituted a far more reasonable approach to adequately inform a defendant of the nature and cause of accusations against him. As defendant was properly advised of the nature and cause of charges against him, Part 1 has no merit.

Part 2: DEFENDANT-PETITIONER CHALLENGES THE CONSTITUTIONALITY OF A NON-UNANIMOUS SIX PERSON JURY IN A FELONY CASE

This particular issue was not raised at the State District Court level or at the Louisiana Supreme Court level. It is clear that the United States Supreme Court does not decide federal constitutional issues raised before it for the first time on review of State Courts' decisions. As the State Courts did not pass on this issue, it is submitted that these portions of the defendant-petitioner's Application for a Writ of Certiorari should be dismissed for want of jurisdiction. *Cardinale v. Louisiana*, 394 U.S. 437, 89 S. Ct. 1161 (1969); *Tacon v. State of Arizona*, 410 U.S. 351, 93 S.Ct. 998 (1973).

Regardless, it is submitted that the decision rendered by

this Honorable Supreme Court of the United States in case No. 78-90, Daniel Burch, et al, petitioners versus State of Louisiana (April 17, 1979) is dispositive of the issue presented in Part 2 of the Writ Application. Defendant-petitioner Boone was convicted by unanimous jury verdicts of both counts of arson with intent to defraud. As Boone's convictions were by unanimous jury verdicts, the decision of this Court in the Burch case would require that these convictions be affirmed.

Part 3: REFUSAL TO FURNISH DEFENDANT WITH COPY OF PRE-SENTENCE INVESTIGATION

Again, defendant raises issues before this Honorable United States Supreme Court which were not presented for consideration in the State Courts.

For the reasons hereinabove cited, it is respectfully submitted that this Court should not decide issues raises here for the first time on review of State Courts' decision.

For the foregoing reasons, it is respectfully submitted that this Honorable Supreme Court of the United States should deny defendant-petitioner for a Writ of Certiorari.

RESPECTFULLY SUBMITTED,

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BY: _____
JOHNNY C. PARKERSON

CERTIFICATE

It hereby is certified that a copy of the foregoing Response was this day served upon J. Michael Small, Attorney for Defendant-Petitioner, 711 Washington Street, Post Office Box 1792, Alexandria, Louisiana, 71301, by depositing same in the United States mail, postage prepaid.

MONROE, LOUISIANA, this 7th day of June, 1979.

_____
JOHNNY C. PARKERSON
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LOUISIANA